

## Internal Revenue Service

Department of the Treasury  
Washington, DC 20224

Number: **201303006**

Release Date: 1/18/2013

Index Number: 9100.00-00, 2642.00-00

Third Party Communication: None  
Date of Communication: Not Applicable  
Person To Contact:  
, ID No.

Telephone Number:

Refer Reply To:

CC:PSI:B04

PLR-123888-12

Date: OCTOBER 16, 2012

Re:

### Legend

Husband

Wife

Date 1

Date 2

Date 3

Date 4

Date 5

Year 1

Year 2

Year 3

Trust 1

Trust 2

Trust 3

Son 1

Son 2

Son 3

Company

Accountant

Attorney

Dear :

This letter responds to a letter dated May 18, 2012, and subsequent correspondence, from your authorized representative, requesting extensions of time under § 2642(g)(1) of the Internal Revenue Code (Code) and § ' 301.9100-1 and 301.9100-3 of the Procedure and Administration Regulations to allocate generation-skipping transfer (GST) exemption to three trusts.

### Facts

You represent the facts to be as follows. Taxpayers are Husband and Wife. On Date 1, a date after December 31, 2000, Taxpayers created three irrevocable trusts, Trust 1, Trust 2, and Trust 3. Trust 1 is for the benefit of Son 1 and his issue; Trust 2 is for the benefit of Son 2 and his issue; and Trust 3 is for the benefit of Son 3 and his issue. Each trust instrument provides the beneficiary of the trust with the right to withdraw from the trust an amount equal to the value of cash or other property transferred to the trust. In Date 2, Taxpayers each transferred common stock in Company to Trust 1, Trust 2, and Trust 3. Husband and Wife each filed a Form 709, United States Gift (and Generation-Skipping Transfer) Tax Returns for Year 1. Husband died on Date 3.

In Date 4, Wife transferred additional common stock in Company to Trust 2 and Trust 3. Wife filed a Form 709 for Year 2. In Year 3, Attorney discovered that Accountant failed to allocate Husband's GST exemption and Wife's GST exemption to the transfers by Husband on Husband's Form 709 for Year 1 and on Wife's Forms 709 for Year 1 and Year 2. Wife died on Date 5.

Husband's Estate and Wife's Estate request extensions of time to make allocations of his GST exemption and her GST exemption to the transfers to Trust 1, Trust 2, and Trust 3. It is represented that, to date, no taxable distributions, taxable terminations, or any other events have occurred with respect to Trust 1, Trust 2, or Trust 3 that would give rise to a GST tax liability.

### Law and Analysis

Section 2601 imposes a tax on every generation-skipping transfer. A generation-skipping transfer is defined under § 2611(a) as (1) a taxable distribution, (2) a taxable termination, and (3) a direct skip.

Section 2631(a) provides that, for purposes of determining the inclusion ratio, every individual shall be allowed a GST exemption amount that may be allocated by such individual (or his executor) to any property with respect to which such individual is the transferor. Section 2631(a), as in effect for decedents dying and generation-skipping transfers before January 1, 2004, provides that, for purposes of determining the inclusion ratio, every individual shall be allowed a GST exemption of \$1,000,000 (adjusted for inflation under § 2631(c)) which may be allocated by such individual (or his executor) to any property with respect to which such individual is the transferor. Section 2631(b) provides that any allocation under § 2631(a), once made, shall be irrevocable.

Section 2632(c)(3)(A) provides that for purposes of § 2632(c), the term “indirect skip” means any transfer of property (other than a direct skip) subject to the tax imposed by chapter 12 to a GST trust.

Section 2632(c)(3)(B)(iv) provides that the term “GST trust” means a trust that could have a generation-skipping transfer with respect to the transferor unless the trust is a trust any portion of which would be included in the gross estate of a non-skip person (other than the transferor) if such person died immediately after the transfer. The value of transferred property shall not be considered to be includible in the gross estate of a non-skip person or subject to a right of withdrawal by reason of such person holding a right to withdraw so much of such property as does not exceed the amount referred to in § 2503(b) with respect to any transferor.

Section 26.2632-1(b)(4)(i) of the Generation-Skipping Transfer Tax Regulations provides that an allocation of GST exemption to property transferred during the transferor’s lifetime, other than a direct skip, is made on Form 709.

Section 2642(b)(1)(A) provides that, except as provided in § 2642(f), if the allocation of the GST exemption to any transfers of property is made on a gift tax return filed on or before the date prescribed by § 6075(b) for such transfer or is deemed to be made under § 2632(b)(1) or (c)(1), the value of such property for purposes of § 2642(a) shall be its value as finally determined for purposes of chapter 12 (within the meaning of § 2001(f)(2)).

Section 2642(g)(1)(A) provides that the Secretary shall by regulation prescribe such circumstances and procedures under which extensions of time will be granted to make an allocation of GST exemption described in § 2642(b)(1) or (2), and an election under § 2632(b)(3) or (c)(5). Such regulations shall include procedures for requesting comparable relief with respect to transfers made before the date of the enactment of this paragraph.

Section 2642(g)(1)(B) provides that in determining whether to grant relief under § 2642(g)(1), the Secretary shall take into account all relevant circumstances, including evidence of intent contained in the trust instrument or instrument of transfer and such other factors as the Secretary deems relevant. For purposes of determining whether to grant relief, the time for making the allocation (or election) shall be treated as if not expressly prescribed by statute.

Notice 2001-50, 2001-2 C.B. 189, provides that under § 2642(g)(1)(B), the time for allocating the GST exemption to lifetime transfers and transfers at death, the time for electing out of the automatic allocation rules, and the time for electing to treat any trust as a GST trust are to be treated as if not expressly prescribed by statute. The Notice further provides that taxpayers may seek an extension of time to make an allocation

described in § 2642(b)(1) or (b)(2) or an election described in § 2632(b)(3) or (c)(5) under the provisions of § 301.9100-3.

Sections 301.9100-1 through 301.9100-3 provide the standards the Commissioner will use to determine whether to grant an extension of time to make an election. Section 301.9100-1(a).

Section 9100-2 provides an automatic extension of time for making certain elections. Section 301.9100-3 provides the standards used to determine whether to grant an extension of time to make an election whose date is prescribed by a regulation (and not expressly provided by statute). In accordance with § 2642(g)(1)(B) and Notice 2001-50, taxpayers may seek an extension of time to make an allocation described in § 2642(b)(1) or (b)(2) or an election described in § 2632(b)(3) or (c)(5) under the provisions of § 301.9100-3.

Section 301.9100-3(a) provides, in part, that requests for relief subject to § 301.9100-3 will be granted when the taxpayer provides the evidence to establish to the satisfaction of the Commissioner that the taxpayer acted reasonably and in good faith, and the grant of relief will not prejudice the interests of the Government.

Section 301.9100-3(b)(1) provides, in part, except as provided in § 301.9100-3(b)(3)(i) through (iii), that a taxpayer is deemed to have acted reasonably and in good faith if the taxpayer reasonably relied on a qualified tax professional, including a tax professional employed by the taxpayer, and the tax professional failed to make, or advise the taxpayer to make, the election.

Based on the facts submitted and representations made, we conclude that Trust 1, Trust 2, and Trust 3 are not “GST trusts” within the meaning of § 2632(c)(3)(B) because the exception in § 2632(c)(3)(B)(iv) applies. We further conclude that the requirements of § 301.9100-3 are satisfied. Therefore, Husband’s Estate is granted an extension of time of 120 days from the date of this letter to allocate Husband’s available GST exemption to the Date 2 transfers to Trust 1, Trust 2, and Trust 3. In addition, Wife’s Estate is granted an extension of time of 120 days from the date of this letter to allocate Wife’s available GST exemption to the Date 2 transfers to Trust 1, Trust 2, and Trust 3, and to the Date 4 transfers to Trust 2 and Trust 3. The allocations will be effective as of the date of the transfers and will be based on the value of the contributions on the date of the transfers.

The allocation of Wife’s GST exemption and Husband’s GST exemption should be made on supplemental Forms 709 and filed with the Internal Revenue Service Center in Cincinnati. A copy of this letter should be forwarded to the Internal Revenue Service, Cincinnati Service Center – Stop 82, Cincinnati, OH 45999, for association with each Form 709.

The rulings contained in this letter are based upon information and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. While this office has not verified any of the material submitted in support of the request for rulings, it is subject to verification on examination.

Except as specifically ruled herein, we express no opinion on the federal tax consequences of the transaction under the cited provisions or under any other provisions of the Code.

The rulings in this letter pertaining to the federal estate and/or generation-skipping transfer tax apply only to the extent that the relevant sections of the Internal Revenue Code are in effect during the period at issue.

This ruling is directed only to the taxpayer who requested it. Section 6110(k)(3) provides that it may not be used or cited as precedent.

Pursuant to a Power of Attorney on file with this office, a copy of this letter is being sent to your authorized representative.

Sincerely,

Associate Chief Counsel  
(Passthroughs and Special Industries)

By \_\_\_\_\_  
James F. Hogan  
Branch Chief, Branch 4  
Office of the Associate Chief Counsel  
(Passthroughs and Special Industries)

Enclosure

Copy for § 6110 purposes